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No. 88-1979

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

JAMES N. FLEMING,

Petitioner,

v.

W. BEDFORD MOORE, III, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Should this Court review a Fourth Circuit decision applying standard jurisdictional principles in rejecting petitioner's latest attempt to collaterally attack a final state court judgment -- which this Court has already repeatedly declined to review?

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STATEMENT OF THE CASE

Petitioner James N. Fleming ("Fleming") is a millionaire real estate developer. Fleming defamed respondent W. Bedford Moore ("Moore") by accusing him of racist bigotry in opposing a housing development near Charlottesville, Virginia. Although Fleming defamed Moore in 1976, the litigation continues, and Fleming has to date avoided fully compensating Moore for his tortious conduct.

Fleming's tactics consist of pursuing every conceivable theory -- however frivolous -- in every possible forum. For instance, this case has already been before this Court at least six times.

When Fleming had exhausted his appeals of the underlying case, and this Court had declined to review the state court's final judgment, Fleming shifted strategies and began filing separate lawsuits in federal court. These efforts have been a complete failure -- except that they have cost Moore thousands of dollars in legal fees. Every court that has addressed Fleming's federal actions has correctly declined to exercise jurisdiction, finding that Fleming is asking a lower federal court to review a final state court judgment.

Fleming's current Petition involves one of these collateral federal actions. Fleming claims that this lawsuit is different from all the previous rejected actions because it alleges a violation of the Thirteenth Amendment. Fleming's theory is that Virginia's insistence that he compensate Moore for the defamation would somehow "restore the slave code."[1]

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1. Petition for Writ of Certiorari ("Petition") at 38-39.

Respondents respectfully suggest that there is nothing in the record or any judicial decisions in this case that warrants this Court's intervention. Like all of Fleming's other attempts to involve federal courts in this litigation, this Petition should be denied.

STATEMENT OF THE FACTS

It is a sad commentary on Fleming's tactics that, although the underlying facts can be stated succinctly, a full description of all of the ensuing litigation would exhaust this Court's page limits.

Fleming is a millionaire real estate developer.[2] He proposed the construction of housing near Moore's home in Albemarle County, Virginia (outside of Charlottesville). Moore opposed the housing development. Fleming accused Moore of being motivated by racial bigotry, although there was no evidence to support even an inference that racism played a role in Moore's position. Fleming placed defamatory advertisements both in a Charlottesville general circulation newspaper and the student newspaper at the University of Virginia (where Moore was a professor).

Moore sued Fleming for defamation, and won. The Virginia Supreme Court reversed the verdict and remanded for a new trial (for a reason unimportant here).[3] The second jury also found

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2. Fleming v. Moore, sub nom. Gazetee, Inc. v. Harris, 229 Va. 1, 43, 325 S.E.2d 713, 746-47 (1985).

3. Fleming v. Moore, 221 Va. 884, 275 S.E.2d 632 (1981).

against Fleming, and awarded $100,000 compensatory and $250,000 punitive damages. Fleming appealed to the Virginia Supreme Court. The Court affirmed the judgment but considered the damages excessive, and remanded.[4] Back at the trial court, Moore accepted a remittitur reducing the damages to $233,333.34.[5]

The long appellate process then began. The Virginia Supreme Court denied Fleming's petition for an appeal,[6] and his later petition for a rehearing.[7] Fleming appealed these Virginia Supreme Court rulings to this Court. His numerous Petitions for a writ of certiorari were denied,[8] as was his Petition for Rehearing.[9]

During the many stages of briefing in this long appeal, all of the pertinent issues were fully addressed. The voluminous briefing included complete discussions of all of the First Amendment issues, including the "opinion" defense. Fleming also raised and fully briefed the Thirteenth Amendment "badge of slavery" issue purportedly implicated in the jury selection in his second trial, as well as other constitutional arguments. During most of this appellate process, Fleming was represented by the

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4. Fleming v. Moore, sub nom. Gazette, Inc. v. Harris, 229 Va. 1, 325 S.E.2d 713, cert. denied, 472 U.S. 1032 (1985).

5. Moore v. Fleming (Albemarle County Circuit Court, May 13, 1985).

6. January 25, 1986

7. March 7, 1986.

8. 469 U.S. 966 (1984); 472 U.S. 1032 (1985); 479 U.S. 890 (1986).

9. 479 U.S. 1012 (1986)

Southeast's largest law firm (Hunton & Williams of Richmond, Virginia).

The Virginia Supreme Court repeatedly rejected all of Fleming's arguments, and this Court declined to review them.

As Fleming undertook his appeal, he also began a series of forays into federal court in an effort to avoid compensating Moore. Fleming first attempted to enjoin enforcement of the second jury's award, but his action was dismissed by a Judge in the Western District of Virginia.[10] The Fourth Circuit affirmed,[11] and this Court denied Fleming's Petition.[12] After another lawsuit made a similar excursion through the federal courts,[13] Fleming filed this action.[14]

Fleming's Complaint recited the standard litany of allegations, advancing all the identical arguments that had been repeatedly rejected by every court that has heard them. Fleming added one new twist. As mentioned above, he had already cited the Thirteenth Amendment and its prohibition on "badges of slavery" in an earlier lawsuit. In this action, he argued that Virginia's

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10. Fleming v. Moore, C.A. No. 84-0042-C (W.D. Va., March 29, 1985)

11. Fleming v. Moore, 780 F.2d 438 (4th Cir. 1985). Predictably, Fleming filed a petition for rehearing and a suggestion for rehearing en banc -- both of which were denied on February 3, 1986.

12. 475 U.S. 1123 (1986).

13. Fleming v. Gibson, C.A. No. 86-0150-R (E.D. Va.) dismissed Nov. 13, 1986, aff'd mem., 826 F.2d 1059 (4th Cir. 1987), cert. denied , 108 S. Ct. 707 (1988).

14. January 16, 1987.

insistence that he pay the defamation judgment amounted to a "badge of slavery."

During the course of this action, Fleming determined to drag other defendants into the litigation. In an amended complaint,[15] Fleming sued the attorneys who had represented Moore, and all of the Virginia Supreme Court Justices who had dared rule against him.

Fleming also began a side show, seeking a TRO to prohibit the enforcement of the state court judgment. His motion was denied by the District Court,[16] the Fourth Circuit,[17] Chief Justice Rehnquist[18] and Justice Marshall.[19]

After the district court dismissed Fleming's amended complaint,[20] he started back up the appellate ladder. The Fourth Circuit affirmed the District Court's dismissal, and Fleming has now filed his current Petition.

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15. February 5, 1987.

16. January 16, 1987.

17. January 19, 1987.

18. January 20, 1987.

19. January 21, 1987.

20. July 22, 1987. See Fourth Circuit Appendix ("4th Cir. App.") at 59-63.

IV. Reasons Why the Writ Should be Denied

Nothing in this record justifies this Court deciding -- for the first time -- to intervene in Fleming's litigation crusade. In fact, the Petition is noticeable more for what is missing than for what is included.[21]

Fleming makes no attempt to cite, let alone satisfy, this Court's criteria for the issuance of a writ of certiorari. See Supreme Court Rule 17. Fleming cites no split among the Circuits, no differences between state or federal courts, and no other reason to justify this Court's involvement.

In sum, the Fourth Circuit applied standard jurisdictional principles in declining to entertain what Fleming himself characterizes as a "collateral attack against a state court libel judgment."[22]

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21. Fleming also advances unsupported and illogical arguments about the merits of the underlying case. Although all of these have already been advanced by Fleming in state and federal court, and repeatedly rejected, it is worth noting just a few of Fleming's misstatements.

    For instance, Fleming argues both that "since the earliest days of the Commonweath" whites have been allowed to express opinions while blacks have not (Petition at 41) and that he did not realize until a 1985 Virginia Supreme Court case that Virginia would adopt the "opinion" doctrine. Id. at 42. Fleming apparently asserts the first position to justify his unfounded and unbecoming attack on Virginia's federal and state court judges, and makes the second argument in an effort to explain why none of his earlier pleadings (of which there were many) mentioned this precise theory.

    Such internal inconsistencies reveal the baselessness of Fleming's current Petition.

22. Petition at 10.

A. Summary of Argument

The Fourth Circuit correctly held that the district court had no subject matter jurisdiction to hear Fleming's case, since it was attempting to overturn a final state court judgment. Under the Rooker-Feldman doctrine, a federal court is not authorized to hear what is in essence an appeal of a state court judgment. There is no support for Fleming's theory that the Rooker-Feldman doctrine does not apply if "fundamental rights" are involved. Likewise, Fleming's constitutional claims are not "separable from and collateral to" the state litigation, but rather are directly connected.

Finally, Fleming's claim that the Respondent state judges are subject to liability is unsupportable.

Fleming not only is incorrect on the merits of his arguments, but also fails to satisfy the criteria under Supreme Court Rule 17 for issuance of a writ.

B. The Fourth Circuit Properly Applied the Rooker-Feldman Doctrine

The common theme running throughout Fleming's federal court "collateral attack" on the Virginia defamation judgment is the Rooker-Feldman doctrine. See District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923). That doctrine reflects the basic structure of our nation's court system. Under 28 U.S.C. 1257, this Court is given exclusive jurisdiction to review state court judgments. Lower federal courts are without subject matter jurisdiction to sit in review of final state court judgments. Feldman, 460 U.S. at 476. The Fourth Circuit decision from which Fleming appeals relied upon this well-settled rule. See Appendix to Petition ("Pet. App.") at 8-9.

The Rooker-Feldman doctrine is of long standing and universal application. See, e.g., Staley v. Ledbetter, 837 F.2d 1016 (11th Cir. 1988); Phinizy v. State, 847 F.2d 282 (5th Cir. 1988); Worldwide Church of God v. McNair, 805 F.2d 888 (9th Cir. 1986); Curry v. Baker, 802 F.2d 1302 (11th Cir. 1986); Van Sickle v. Holloway, 791 F.2d 1431 (10th Cir. 1986); Anderson v. State, 793 F.2d 262 (10th Cir. 1986); Carbonell v. Department of Health & Human Resources, 772 F.2d 185 (5th Cir. 1985); Hagerty v. Succession of Clement, 749 F.2d 217 (5th Cir. 1984), cert. denied, 474 U.S. 968 (1985).

Fleming himself is no stranger to the Rooker-Feldman doctrine. The Fourth Circuit had already instructed Fleming and his lawyers about the doctrine in dismissing an earlier action --"since Fleming's sole possible federal remedy is by appeal from the Supreme Court of Virginia to the United States Supreme Court." Fleming v. Moore, 780 F.2d 438 (4th Cir. 1985). And in case Fleming missed the point, on four other occasions courts have told him the same thing.[23]

It is difficult to discern exactly what Fleming is arguing in connection with the Rooker-Feldman doctrine. He cites no split among the Circuits on its meaning or application, and no variance between this Court's articulation of the doctrine and how the Fourth Circuit applied it.

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23. Fleming v. Moore, C.A. No. 84-0042-C, slip op. at 1 (W.D. Va., March 29, 1985) (Turk, C.J.), cert. denied, 475 U.S. 1123 (1986): Fleming v. Moore, C.A. No. 87-0004-C, Order at 1 (W.D. Va., Jan. 16, 1987) (Turk, C. J.), 4th Cir. App. at 8; Fleming v. Moore, C.A. No. 87-3506, slip op. at 3 (4th Cir., Jan. 22, 1987) (Widener, J.), 4th Cir. App. at 11; Fleming v. Moore, C.A. 87-0004-C, slip op. at 3-4 (W.D. Va., July 22, 1978) (Merhige, J.) 4th Cir. App. at 61-62.

Instead, Fleming apparently argues that the Rooker-Feldman doctrine simply does not exist if a plaintiff is seeking "vindication of fundamental rights."[24] However, such an exception (which would swallow the rule) appears nowhere in any of this Court's opinions. In fact, the Feldman case itself holds just the opposite -- it applied the doctrine in the face of constitutional allegations. 460 U.S. at 468. And the Fourth Circuit's earlier decision in one of Fleming's cases held precisely the same thing. See Fleming v. Moore, 780 F.2d 438 (4th Cir. 1985).

In attempting to avoid the Rooker-Feldman doctrine, Fleming makes two additional arguments.[25] First, he attempts to construct precedent supporting his position from decisions of this Court addressing completely different issues. One involved a federal court's reluctance to intervene in political questions,[26] and another analyzed a federal court's power to maintain the status quo so that state court proceedings can run their course.[27] These cases do not support, let alone deal with, Fleming's argument that he can end-run the Rooker-Feldman doctrine by invoking constitutional claims.

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24. Petition at 1.

25. Fleming also mischaracterizes earlier court decisions. Perhaps most egregious is his argument that Judge Widener of the Fourth Circuit thought that enforcement of the state court judgement would be a "badge of slavery." Petition at 30. Of course, if Judge Widener had actually made such a holding, he would not have ruled against Fleming. Instead, Judge Widener was characterizing the law upon which Fleming was basing his unsuccessful appeal to the Fourth Circuit (see Fourth Circuit Opinion, Pet. App. at 36).

26. Baker v. Carr, 369 U.S. 186 (1962).

27. Pennzoil Co. v. Texaco, Inc., 481 U.S. 1 (1987).

Second, Fleming argues that his constitutional claims are "separable from and collateral to" the state litigation. Petition at 39-40. This argument defies both the record evidence and common sense. The very essence of Fleming's constitutional claim is that the final state court judgment is invalid and execution on it is a "badge of slavery." In fact, much of Fleming's Petition is composed of a detailed scrutiny of the underlying state court issues, including even references to state court depositions. See Petition at 18-19. Thus, Fleming's constitutional claims are more than "inextricably intertwined" with the state court judgment -- they are coextensive with it.

Fleming's attempts to avoid the Rooker-Feldman doctrine would be unavailing even if they were brought here for the first time. But Fleming has already tried to convince numerous federal courts at all levels that the doctrine should not prevent his collateral attack on the Virginia judgment. Every court has rejected Fleming's arguments.

Finally, it is clear that even if Fleming were correct, he could not justify this Court's intervention under Supreme Court Rule 17. Fleming makes no effort to satisfy any of the criteria for this Court's involvement in this protracted litigation.[28]

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28. Although Fleming's Petition does not address the important issues, it does seriously mischaracterize Virginia defamation law.

For instance, Fleming argues that the Virginia Supreme Court created a special rule applicable only in his case that a plaintiff could satisfy the "special damages" requirement of non-per se defamation by establishing mental suffering or loss of reputation. See Petition at 16. Fleming argues that the Supreme Court then quickly abandoned this doctrine. Id.

(Continued on next page)

C. The Fourth Circuit Properly Determined that the State Court Judges were Immune

The Fourth Circuit correctly found that the Respondent state judges are absolutely immune.

In dicta, the Fourth Circuit suggested that the state court judges were absolutely immune from Fleming's action. App. at 16 n.7. Fleming challenges this suggestion, citing Forrester v. White, 484 U.S. 219 (1988). This argument is baseless on its face. Forrester involved an action against a state court judge acting in his administrative capacity -- in hiring and firing court personnel. It did nothing to strip state court judges of their absolute judicial immunity.

CONCLUSION

Fleming has already pursued his frivolous claims in numerous lawsuits advanced at different federal levels for many years. Every court that has addressed Fleming's arguments has rejected them summarily. On numerous separate occasions, this Court has already declined to review the underlying state litigation and Fleming's federal collateral attacks. The same result is appropriate here.

Fleming's Petition should be denied.

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28. (Continued from previous page)

> However, this is not true, and even a cursory check of Virginia precedent would reveal its falsity. Since Fleming, the Virginia Supreme Court has again explicitly defined "special damages" in non-per se defamation cases to include mental suffering and reputational harm. See Sateren v. Montgomery Ward & Co., 234 Va. 303, 305, 362 S.E.2d 324, 326 (1987).

Respectfully submitted,

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